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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2217/2012*, **

Communication submitted by:	Elena Popova (represented by counsel, Sergei Golubok)
Alleged victim:	The author
State party:	The Russian Federation
Date of communication:	10 May 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 29 November 2012 (not issued in document form)
Date of adoption of Views:	6 April 2018
Subject matter:	Arrest and fine as a result of an unauthorized public event
Procedural issue:	Non-substantiation of the claims
Substantive issues:	Right to assembly, fair trial
Articles of the Covenant:	14 (1), 21
Article of the Optional Protocol:	2, 5 (2) (b)

1. The author of the communication is Elena Popova, born in 1965, citizen of the Russian Federation. She claims that the State party violated her rights under article 14 (1) and 21 of the Covenant. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is represented by counsel.

Factual background

2.1 On 5 December 2011, at 9.50 p.m., the author was arrested in the city of Saint Petersburg, Russian Federation, on Ligovsky Avenue, on suspicion of organizing an unauthorized public event. In particular, the author was accused of telling other participants to chant specific words, such as "Russia without Putin" and "No matter who you vote for,

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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you will get [expletive]". She was also accused of actively calling on other persons to participate in the event.

2.2 The police officers who arrived at the scene attempted to stop the event, using loudspeakers to warn the participants that they were taking part in an unauthorized event, and ordering them to cease all activities. According to police reports and court records, the author refused and was arrested, along with several other participants.

2.3 During the court hearings, the author pleaded her innocence. While admitting that she had been on Ligovsky Avenue near the "Moscow" train station on 5 December 2011, she testified that she had been there to meet an acquaintance and saw a crowd and a heavy presence of police. Some people were standing, others were walking. After a while, people started to dance in a circle, which she filmed with her camera. Suddenly, police officers started to grab people and take them to their patrol cars. The author denies chanting any slogans or organizing any events. She claims she heard others chanting "Russia without Putin". She denies resisting arrest or assaulting any police officers.

2.4 One of the witnesses at the hearing, the author's colleague, K.O.V., stated that she had seen her at the office at about 8 p.m., when the author had told her that she would be going near the "Moscow" rail station to "help someone", and that it was possible that she would be taken to a police station. Another witness, M.K.V., a police officer, testified that he and other police officers had arrived at the scene at around 10 p.m. The crowd had been chanting "anti-government slogans", then some participants had formed a "round dance". He said that police officers had warned the participants to stop the event, and that Ms. Popova had also been part of the round dance and chanting slogans. All participants had been detained and put in police buses. During the arrest, he said, Ms Popova had grabbed him by his police uniform.

2.5 The court imposed on the author an administrative fine of 1,000 roubles.[1] It considered that the author had violated the provisions of federal Law No. 54-FZ "on gatherings, meetings, demonstrations, processions and pickets" (the Law on Public Events) dated 19 June 2004, as she had not submitted a "notice" to the local authorities. This notice must be submitted not less than 10 days before the planned event.

2.6 The local authority, the Committee on Issues of Law, Order and Security of the City of Saint Petersburg, informed the court that such notice had not been submitted. The court also considered that police officers at the scene had warned the participants to cease their activities. The court stated in its decision that police officers had acted within their authority, in accordance with article 17 (2) of the Law on Public Events.

2.7 The court further considered that the author had denied organizing the gathering simply to avoid the administrative punishment, and that her actions had been clearly prohibited by article 20.2 (1) of the Code of Administrative Offences, which proscribed the holding of any unauthorized public event.

2.8 The author appealed against the decision to the Smolninsky District Court in Saint Petersburg. On 12 March 2012, the District Court dismissed her appeal and upheld the reasoning of the first instance court. The proceedings in the District Court were attended by the author but not by a prosecutor, who had also been absent at the first court hearing.

2.9 The author claims that she could have appealed against the decision of the District Court through supervisory review proceedings, but she considered that procedure to be ineffective and not necessary to exhaust.

The complaint

3.1 The author claims that the characteristics of the administrative proceedings against her fall within the purview of article 14 (1) of the Covenant. According to the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the fairness of proceedings implies the equality of arms and therefore also implies the adversarial nature of the proceedings. This adversity is impossible without both parties

[1] Approximately 25 euros at the time.

— the defence and the prosecution — being present. In *Ozerov v. Russia*, the European Court of Human Rights found that the examination of a case in the absence of a prosecutor confuses the roles of the prosecutor and the judge and gives legitimate doubts as to the impartiality of the bench. In the absence of a prosecutor, it is obvious that a judge has to take that role, or in the alternative, discontinue the case. Since the Prosecutor was absent in the proceedings against the author, she claims that the State party violated her fair trial rights under article 14 (1).

3.2 Even assuming that the author had organized a "mass event" — although that is disputed by her — her arrest, conviction and imposition of an administrative fine was unnecessary in a democratic society. It should be noted that the gathering on 5 December 2011 had constituted a "direct and immediate" response to the announcement of the preliminary results of the 4 December parliamentary elections, which had been considered to have been falsified. Participants in the events on 5 December 2011 had come to Ligovsky Avenue to protest peacefully against the results. In its jurisprudence, the Human Rights Committee has noted that States parties should demonstrate the necessity of the restrictions imposed.[2] In the present case, the courts failed to explain how in practice the author's actions had ceased to be peaceful or had disturbed the public peace, for example, by preventing traffic flow or the passage of pedestrians. The courts limited themselves to a formal review as to whether prior authorization had been obtained from local authorities. The author therefore contends that her rights under article 21 of the Covenant were violated.

State party's observations on admissibility and merits

4.1 On 31 January 2013, the State party challenged the admissibility of the communication. It confirmed that the author had been ordered to pay an administrative fine for the violation of article 20.2 (1) of the Code of Administrative Offences of the Russian Federation. This decision had been appealed to the Smolninsky District Court, which had upheld the lower court's decision, thus bringing into effect the 6 February 2012 decision.

4.2 The Saint Petersburg City Court reported that the author had not lodged an appeal. The State party further contended that the author had not filed a complaint to the Prosecutor's Office, in accordance with article 25.11 (1) (3) of the Code of Administrative Offences. Since the author had not exhausted domestic remedies, the communication must be declared inadmissible.

4.3 On 19 June 2013, the State party submitted its observations regarding the merits of the communication. It submitted that the author had been arrested on 5 December 2011 while "resisting lawful orders" of the law enforcement agents who had been performing their official duties of protecting public safety. During the event in question, Elena Popova had told other participants the specific words to chant and had coordinated actions, and had therefore served as an organizer of the event, which had been spontaneous and not authorized as required. The participants had refused to obey lawful orders and had been removed by force. The author had been charged with violating articles 20.2 (1) and 19.3 (1) of the Code of Administrative Offences, for refusing to obey the lawful orders of law enforcement agents.

4.4 The State party submits that article 31 of the Constitution of the Russian Federation gives the citizens of the Russian Federation a right to hold peaceful "rallies, meetings and demonstrations, marches and pickets". According to the Law on Public Events, one of the principles of organizing a public event is "lawfulness", that is, compliance with the provisions of the Constitution of the Russian Federation, the said Law and other legislative acts. Article 5 (4) (1) of the Law on Public Events requires a notice to be filed with the local authorities.

4.5 By the court decision of 6 February 2012, the author was ordered to pay an administrative fine. She appealed against that decision, but her appeal was rejected. The author was also detained for 14 hours. According to article 27.5 (3) of the Code of Administrative Offences, any person who is being charged with an administrative offence can be detained for up to 48 hours.

[2] The author refers to *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), paras. 10.5–10.6.

4.6 The State party further submits that the Smolninsky District Court duly considered the author's claims under article 21 of the Covenant, which foresees no restrictions to the right to peaceful assembly, except for those necessary in a democratic society, in the interests of national security, or public safety, or morals or the protection of the rights and freedoms of others. Article 17 (3) of the Constitution of the Russian Federation provides for the full enjoyment of human rights and freedoms provided they do not interfere with the rights and freedoms of others. The requirement to file a notice is in order to protect public order and the rights and freedoms of other citizens, and therefore does not violate the rights to freedom of assembly under article 21 of the Covenant.

4.7 Regarding the author's claims under article 14 (1), the State party submits that, under article 25.11 (1) of the Code of Administrative Offences, a prosecutor who participates in legal proceedings has the right to initiate an administrative case, participate in hearings, provide evidence, file motions and perform other actions as prescribed by federal law. In accordance with article 25.11 (2) of the same law, the prosecutor is only informed of the time, date and location of hearings relating to administrative offences committed by minors and those relating to proceedings that the prosecutor himself/herself initiated. In other circumstances, federal law does not require the prosecutor to participate in all administrative hearings.

4.8 As is clear from court records, the author was able to participate in the proceedings and explain her position regarding the alleged offence. At the appeal level, in the Smolninsky District Court, the author was represented by her lawyer, Sergei Golubok. The author therefore effectively exercised her constitutional right to defence in court proceedings. The State party concludes that there has been no violation of articles 14 (1) or 21 of the Covenant.

Author's comments on the State party's observations on admissibility and merits

5.1 The author, responding to the State party's observations, reiterates her position regarding the admissibility of her claims, and asks the Committee to consider the communication admissible in its entirety. She notes that the State party has argued that the fine imposed on her was in accordance with Russian legislation. The thrust of her claims however, concerns whether the restrictions imposed on her were necessary in a democratic society, within the meaning of article 21 of the Covenant. The protest in response to an important issue — allegations of fabricated election results — was "absolutely peaceful and did not harm or endanger anyone or anything".

5.2 The author submits that the State party has missed the point in its response to the author's claims of violation of article 14 (1). The author was indeed represented by a lawyer, but submits that the absence of the Prosecutor violated a principle of the equality of arms. The State party does not put forward an argument to counter that claim. The author considers that the State party should return the administrative fine that she paid, reimburse her for costs she incurred during the proceedings before the courts and the Committee, and issue a public apology.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the State party's argument that the author has failed to exhaust all available domestic remedies by not filing a supervisory review appeal. The Committee recalls its jurisprudence, according to which the filing of requests to a court or to a prosecutor's office for a supervisory review directed against court decisions that have entered into force and depend on the discretionary power of a judge or a prosecutor

constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.[3] The State party has not shown, however, whether and in how many cases petitions under supervisory review procedures have been applied successfully in cases concerning administrative arrests and fines. In those circumstances, the Committee considers that it is not precluded by articles 2 and 5 (2) (b) of the Optional Protocol from examining the present communication.[4]

6.4 The Committee has noted the author's claims under article 14 (1) of the Covenant in that the Prosecutor was absent during the administrative proceedings against the author, which raised legitimate doubts as to the impartiality of the bench. However, in the absence of any further pertinent information on file, and in the light of the State party's explanation regarding the absence of the prosecutor during such proceedings (see para. 4.7 above), the Committee considers that the author has failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, her remaining claims under 21 of the Covenant, declares them admissible and proceeds with their consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that, by subjecting her to an administrative arrest and fine, the State party violated her rights to freedom of assembly. The author contends that she had been arrested at a peaceful protest held in "direct and immediate" response to the announcement of parliamentary electoral results, which had been considered falsified. The State party argues that the author was arrested and fined for organizing a public event without filing a 10-day prior notice with the local authorities, as required under federal Law No. 54-FZ, and for not obeying lawful orders of police officers who were trying to disperse the event.

7.3 The Committee recalls that the right to peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for the public expression of an individual's views and opinions and indispensable in a democratic society.[5] That right entails the possibility of organizing and participating in a peaceful assembly in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience and no restriction to that right is permissible unless it is: (a) imposed in conformity with the law; and (b) necessary in a democratic society, in the interests of national security or public safety, public order (*ordre public*), protection of public health or morals or protection of the rights and freedoms of others. When a State party imposes restrictions with the aim of reconciling an individual's right of peaceful assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it.[6] The State party is thus under the obligation to justify the limitation of the right protected by article 21 of the Covenant.[7]

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[3] See *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; *Protsko and Tolchin v. Belarus* (CCPR/C/109/D/1919-1920/2009), para. 6.5; *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; *P.L. v. Belarus* (CCPR/C/102/D/1814/2008), para. 6.2; *E.Z. v. Kazakhstan* (CCPR/C/113/D/2021/2010), para. 7.3; *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; and *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 9.6.

[4] See also *Kostenko v. Russian Federation* (CCPR/C/115/D/2141/2012), para. 6.3.

[5] See, for example, *Margarita Korol v. Belarus* (CCPR/C/117/D/2089/2011), para. 7.5.

[6] Ibid.

[7] See *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

7.4 In the present case, the administrative arrest and fine of the author constituted infringement on her right of peaceful assembly. The Committee notes that the State party submits that the restriction was imposed in conformity with the Constitution of the Russian Federation, article 31 and the Law on Public Events, article 5 (4) (1), which requires a notice to be filed with the local authorities (see para. 4.4 above). The Committee also notes the State party's argument that the requirement to file a notice is in order to protect public order as well as the rights and freedoms of other citizens (see para. 4.6 above). The Committee further notes, however, the author's claim that, although the restriction may have been lawful under domestic law, her arrest, conviction and imposition of an administrative fine were unnecessary in a democratic society for the pursuance of the legitimate aims invoked by the State party (see para. 3.2 above). The author further argues that the protest in response to an important issue — allegations of fabricated election results — was absolutely peaceful and did not harm or endanger anyone or anything (see para. 5.1 above).

7.5. The Committee has previously held that notice requirements may be compatible with the permitted limitations laid down in article 21 of the Covenant.[8] However, while a system of prior notices may be important for the smooth conduct of public demonstrations, their enforcement cannot become an end in itself.[9] Any interference with the right to peaceful assembly must still be justified by the State party in the light of the second sentence of article 21. This is particularly true for spontaneous demonstrations, which cannot by their very nature be subject to a lengthy system of submitting a prior notice.

7.6 The Committee notes the author's contention that the courts only reviewed whether prior authorization had been obtained, and did not explain how the author's actions had ceased to be peaceful or had disturbed the public peace, for example by preventing traffic flow or passage of pedestrians (see para. 3.2 above), a description that was not challenged by the State party. The Committee therefore considers, based on the material before it, that the State party has failed to demonstrate that the author's administrative arrest and fine following a spontaneous and peaceful public protest were necessary in a democratic society and were proportionate to the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, as required by article 21 of the Covenant. For those reasons, the Committee concludes that, in the present case, the State party has violated article 21 of the Covenant.

8. The Committee, acting under article 5 (4), of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 21 of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy. Accordingly, the State party is obligated, inter alia, to provide the author with adequate compensation and reimbursement of the fine and any legal costs incurred by her. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In that regard, the State party should review its domestic laws to ensure conformity with article 21 of the Covenant, including in the context of spontaneous demonstrations.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

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[8] See *Kivenmaa v. Finland* (CCPR/C/50/D/412/1990) para. 9.2.

[9] See European Court of Human Rights, *Annenkov and others v. Russia* (application No. 31475/10), judgment of 25 October 2017, para. 131 (d).